

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
TRANS AMERICAN DEVELOPMENT)
AND CONSTRUCTION, INC.,)
Appellant,)
v.)
PUGET SOUND AIR POLLUTION)
CONTROL AGENCY,)
Respondent.)

PCHB No. 659
FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER being an appeal of two civil penalties (\$50.00 and \$150.00) for alleged open burning violations of respondent's Regulation I; having come on regularly for hearing before the Pollution Control Hearings Board on the 18th day of December, 1974, at Tacoma, Washington; and appellant, Trans American Development and Construction, Inc., appearing by its President, M. L. Milton and respondent, Puget Sound Air Pollution Control Agency, appearing through its attorney, Keith D. McGoffin; and Board members present at the hearing being Walt Woodward (presiding) and Chris Smith and the Board having considered the sworn testimony, exhibits

1 records and files herein and arguments of counsel and having entered
2 on the 23rd day of December, 1974, its proposed Findings of Fact,
3 Conclusions of Law and Order, and the Board having served said proposed
4 Findings, Conclusions and Order upon all parties herein by certified
5 mail, return receipt requested and twenty days having elapsed from
6 said service; and

7 The Board having received no exceptions to said proposed Findings,
8 Conclusions and Order; and the Board being fully advised in the premises;
9 now therefore,

10 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed
11 Findings of Fact, Conclusions of Law and Order, dated the 23rd day of
12 December, 1974, and incorporated by this reference herein and attached
hereto as Exhibit A, are adopted and hereby entered as the Board's
14 Final Findings of Fact, Conclusions of Law and Order herein.

15 DONE at Lacey, Washington, this 20th day of January, 1975.

16 POLLUTION CONTROL HEARINGS BOARD

17
18 Walt Woodward
19 WALT WOODWARD, Chairman

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21 Chris Smith
22 CHRIS SMITH, Member

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26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW
AND ORDER

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Appellant,)
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PUGET SOUND AIR POLLUTION)
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FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

This matter, the appeal of two civil penalties (\$50 and \$150) for alleged open burning violations of respondent's Regulation I, came as a formal hearing before the Pollution Control Hearings Board (Walt Woodward, presiding officer, and Chris Smith) in the Tacoma facility of the State Board of Industrial Insurance Appeals on December 18, 1974.

Appellant was represented by its president, M. L. Milton; respondent appeared through Keith D. McGoffin. Dave Ummel, Olympia court reporter, recorded the proceedings.

EXHIBIT A

1 Witnesses were sworn and testified. Exhibits were admitted.

2 From testimony heard and exhibits examined, the Pollution Control
3 Hearings Board makes these

4 FINDINGS OF FACT

5 I.

6 Respondent, pursuant to Section 5, chapter 69, Laws of 1974, 3rd
7 Ex. Sess., has filed with this Board a certified copy of Regulation I
8 containing respondent's regulations and amendments thereto.

9 II.

10 Section 9.02(d)(2) of Regulation I makes it unlawful to cause or
11 allow an outdoor fire for land clearing in an area with a general
12 population density of 2,500 or more persons per square mile. Section
13 3.29 of Regulation I authorizes a civil penalty of not more than \$250
14 for each violation of Regulation I.

15 III.

16 In April, 1974, appellant, engaged in a land clearing project at
17 South 12th and Whitman, Tacoma, Pierce County, applied for an open
18 burning permit from respondent. The permit was denied because of the
19 population density requirement in Section 9.02(d)(2) of respondent's
20 Regulation I.

21 IV.

22 Appellant collected stumps and other debris in a pile to be hauled
23 from the site for disposal. On July 14 or 15, 1974, from an unknown
24 cause, the pile of debris was ignited. In the morning of July 15, 1974,
25 appellant's president was called by the Tacoma Fire Department, informed
26 of the burning debris pile and directed to extinguish it.

27 FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 Appellant's president contacted a bulldozer operator on July 16,
2 1974. The bulldozer was used that day to smother the fire with dirt.

3 V.

4 On July 17, 1974, an inspector on respondent's staff saw the pile
5 of stumps smoldering and emitting a plume of white smoke. He told
6 appellant's personnel to extinguish the fire and issued to appellant
7 Notice of Violation No. 9640, citing Section 9.02 of Regulation I.

8 On July 18, 1974, the inspector returned to the site and found
9 the debris pile unchanged, still smoldering and emitting smoke. He
10 issued to appellant Notice of Violation No. 9643, citing Section 9.02 of
11 Regulation I.

12 VI.

13 Subsequently, respondent served appellant with Notice of Civil
14 Penalty No. 1634, in the sum of \$50 in connection with Notice of
15 Violation No. 9640, and Notice of Civil Penalty No. 1635, in the sum
16 of \$150 in connection with Notice of Violation No. 9643. The two
17 civil penalties are the subject of this appeal.

18 VII.

19 Appellant's president testified that a mechanical part on the
20 bulldozer was broken on July 17, 1974 and was not repaired until late
21 in the day on July 18, 1974. The bulldozer then was employed to
22 extinguish the fire in the debris pile.

23 VIII.

24 Appellant's president is a former Tacoma fireman with ten years'
25 experience. He is, and was in April, 1974, knowledgeable of respondent's
26 burning regulations.

27 FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

IX.

Any Conclusion of Law hereinafter stated which is deemed to be a Finding of Fact is adopted herewith as same.

From these Findings, the Pollution Control Hearings Board comes to these

CONCLUSIONS OF LAW

I.

Appellant was in violation of Section 9.02(d)(2) of respondent's Regulation I as cited in Notices of Violation Nos. 9640 and 9643.

II.

As to the reasonableness of the penalties, respondent exercised leniency in setting them at a sum which is only two-fifths of the maximum allowable amount. The Board cannot escape the fact that it took appellant's president from the morning of July 15, 1974, when he first was notified of the smoldering, smoking pile of debris, to the late afternoon of July 18, 1974, to extinguish the fire. Such delay by a citizen untrained in fire and inexperienced in respondent's regulations hardly would be tolerable; for this delay to be the responsibility of a trained firefighter who knew the regulations is even more difficult for this Board to countenance. The penalties certainly are most reasonable.

III.

Any Conclusion of Law herein stated which is deemed to be a Finding of Fact is adopted herewith as same.

Therefore, the Pollution Control Hearings Board issues this

ORDER

The appeal is denied and Notices of Civil Penalty Nos. 1634 and

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 1635 are sustained in the total amount of \$200.

2 DONE at Lacey, Washington this 23^d day of December, 1974.

3 POLLUTION CONTROL HEARINGS BOARD

4 Walt Woodward
5 WALT WOODWARD, Chairman

6 Chris Smith
7 CHRIS SMITH, Member

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